

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) CRIMINAL ACTION NUMBER
)
) IN-09-01-0400 thru IN-09-01-0404
 JOSEPH TAYE) IN-09-02-1116 and IN-09-02-1117
)
 Defendant) ID NO. 0812020623

***FINDINGS OF FACT
CONCLUSIONS OF LAW***

November 20, 2009

Appearances:

Sean P. Lugg, Esquire, and John W. Downs, Esquire, Deputy Attorneys General,
Department of Justice, Wilmington, Delaware, attorneys for the State of Delaware

Joseph A. Hurley, Esquire, Wilmington, Delaware, attorney for the Defendant

HERLIHY, Judge

Joseph Taye has been indicted for murder in the first degree in that he recklessly caused the death of Michelle Smith a firefighter.¹ He was also indicted for murder in the second degree,² assault in the first degree,³ recklessly endangering in the first degree,⁴ leaving the scene of a collision causing death,⁵ and driving while license suspended or revoked.⁶

This case went to trial without a jury. This opinion constitutes this Court's findings of facts and conclusions of law.⁷

Findings of Fact

1. Tracy Young is the registered owner of a 2004, 700 series 4-door BMW.
2. The vehicle was not modified in any respect to provide that a handicapped person could drive it.
3. Joseph Taye is a paraplegic, who did not undertake special lessons to drive in his condition, and was not licensed to drive as a handicapped driver. His license was revoked in May 2005 prior to Taye becoming a paraplegic.

¹ 11 *Del. C.* § 636(a)(4).

² 11 *Del. C.* § 635.

³ 11 *Del. C.* § 613.

⁴ 11 *Del. C.* § 604.

⁵ 21 *Del. C.* § 4204.

⁶ 21 *Del. C.* § 2756.

⁷ Super. Ct. Crim. R. 23(c).

4. On December 20, 2008, Taye patronized an adult entertainment establishment presumably north of the location of the incident underlying charges at issue. Its exact location was not established at trial. There is no credible evidence that Taye consumed any alcoholic beverages while at the establishment.

5. Taye operated Young's BMW from their home in Bear to the adult entertainment establishment on December 20th.

6. On December 20, 2008, Edward Reiss was involved in a single vehicle accident with his motorcycle in front of the New Castle County Airport and close to the intersection of School Lane and U.S. Route 13/S. DuPont Highway. This incident caused him to end up in the north end of the southbound turn lane from U.S. 13 to School Lane. His body was observed by several passing motorists, at least four of whom stopped their vehicles in the median near his body and got out. At least one vehicle had its four-way flashers on. The onlookers were within feet of Reiss, and later Michelle Smith. A call was made to 911.

7. On December 20, 2008, two members of the Five Points Volunteer Fire Company "manned" a rescue truck at a Wilmington Manor Fire Company station to provide coverage for Wilmington Manor whose members were at a Christmas dinner. One of the two, is a firefighter and an emergency medical technician (EMT). The station is located on Southbound Side of U.S. Route 13.

8. At the same time, Michelle Smith and John Atkinson, members of the Delaware

City Fire Company “manned” an ambulance at the same Wilmington Manor Station also to provide coverage for emergency medical services. As part of the coverage that night, both the ambulance and fire rescue truck responded, prior to the incident involved in this case, to a situation involving a medical matter, where Five Points personnel helped with a stretcher and subsequently to an unrelated accident. A rescue truck is routinely dispatched to accident scenes because it has special equipment and tools to help, among other things, extricate people from damaged vehicles.⁸ There were no fires at either location.

9. Michelle Smith drove the ambulance on the evening of December 20th. She had been duly licensed to drive an emergency vehicle and had received emergency first responder (EMR) training. On that night she was dressed in a dark uniform and had no reflective clothing.

10. Sometime around 9:45 p.m., the ambulance and the rescue truck were dispatched to the scene where Reiss was injured and in the roadway. The ambulance left the fire station first with its siren and emergency lights operating. It traveled southbound on U.S. Route 13 approximately three-quarters of a mile to get to Reiss’ location.

⁸ “Rescue vehicle basically has all rescue operations: power tools, saws, lifting equipment, water, phone, if possible, basic - - I mean, it’s just everything that we would need in case we had to cut somebody out or assist to cut somebody out or to make sure that the - - whatever we’re running into is stable that we can get into the vehicle.” Testimony of John Atkinson dated October 6, 2009.

11. At the scene where Reiss' body was in the turn lane, Route 13 has four through travel lanes. The inside lane, that is closest to the median separating the northbound and southbound lanes, will be referred to as lane 1. Lane 2 is the one next to it and so forth going over to the westbound side of Route 13.

12. Upon arrival, Smith parked the ambulance in lane 2. She left the flashing lights on. Before she and Atkinson get out, she radioed the emergency call center to notify it of their arrival. She and Atkinson then got out of the ambulance to go to Reiss whose body was a few feet from the rear door of the ambulance. The two of them checked on Reiss' condition.

13. Smith began to administer first aid while Hutchinson, an Emergency Medical Technician (EMT), went to the lane 3 side of the ambulance to retrieve some medical equipment.

14. Shortly after Smith and Hutchinson had arrived and were out of the ambulance, New Castle County Patrolman Jordan Miller, who had been traveling southbound on Route 13, pulled up on the scene having seen the ambulance's flashing lights. He was driving a marked police car, primarily white, with "County Police" and other markings, all of which were reflective when light hit them, on the side and rear. He had turned on his vehicle's emergency lights before stopping at the scene.

15. Miller parked his car at angle with the front portion facing east (toward the northbound lanes). A portion of the front end of his car was in lane 1; most of it was in

lane 2. All of his emergency lighting was operating including flashers on the rear and top of the car. He parked his car 15-30 feet behind the ambulance.

16. Miller remained in his vehicle for a brief moment.

17. The rescue truck from Five Points Fire Company providing coverage for Wilmington Manor, left the fire station a short while after the ambulance.

18. As it proceeded southbound on U.S. 13, that truck had all of its emergency lights and sirens operating. It was proceeding for most of the distance in lane 2, which at that point on Route 13 is three lanes and is straight and level from the fire station to the scene where Reiss' body was.

19. As it proceeded, all the traffic was on the right side, most of it slowing; many brake lights were observed.

20. North of the scene where Reiss was in the roadway and where Patrolman Miller had parked his police car, two vehicles passed the Five Points Fire rescue truck. In the three-quarters of a mile from the fire station to where Reiss was, they were the only two vehicles to pass the rescue truck on the left. The second car was a car length or less behind the first car. Defendant Taye was driving the second car. Estimates of their speed range from forty-five to seventy miler per hour, but the Court finds it cannot be established beyond a reasonable doubt what the cars' speed was when they passed the rescue truck.

Based on the testimony of the occupants of the rescue truck, the rescue truck was going at or near the speed limit of forty-five to fifty miles per hour when the two cars

passed or was slowing down when they did. Therefore, the two cars, including Taye in the BMW, either exceeded the posted speed limit and yet passed the rescue truck, or chose to maintain their speed, and passed the truck on the left as it slowed.

21. The rescue truck did not leave the fire station at the same time as the ambulance. It left a minute or two later eventually reaching a top speed, within limits, of forty-five to fifty miles per hour. While it could not and cannot be determined the speed of the two vehicles, they had to be traveling in excess of the speed limit to catch up to the truck which had traveled approximately a half mile from the fire station to the point where the two vehicles passed the rescue truck. Prior to the time the two cars passed the truck, it had started to move into lane 1. An occupant of the rescue truck saw the BMW go partway off the roadway and onto the grass median as it passed the fire truck in order to avoid it.

22. Very shortly after passing the rescue truck, the first car braked and veered to the right in an apparent effort to avoid Patrolman Miller's marked police car. It managed to do so.

23. The second car, the BMW which Taye was operating, proceeded straight, without braking, eventually struck the County Police car and was seen to hit either Reiss or his motorcycle. None of the occupants of the fire truck saw the BMW strike Smith.

24. As Miller was still in his vehicle calling in his location, the BMW hit his police car, scraping the driver's door and striking the front wheel area with sufficient force to knock the front left tire askew, disabling the police car and pushing the front end out of

lane 1 into lane 2 where the front end now faced westbound. Miller was dazed but suffered no significant injury.

25. The BMW continued on striking Reiss' body still in the roadway. As a result of the BMW striking him, Reiss suffered serious physical injuries.⁹ Among the civilians who had earlier stopped at the scene to help was a young man and his girlfriend. The girlfriend started to help Smith with Reiss. Her boyfriend was standing nearby. He heard the crash between the BMW and the County Police car. He pulled his girlfriend out of the way just before the BMW went past and as it struck Smith and Reiss.

26. Smith had been kneeling and administering first aid to Reiss and stood up apparently when she heard the crash between the police car and the BMW. The BMW struck her, part of her body hitting the front headlight area, and her head hitting the BMW's driver's windshield with sufficient force to shatter the left quarter of it and put a hole in it of several inches.

27. Smith's body was propelled in the air, flipping end over end several times, landing in the turn lane approximately eighty-four feet from where the BMW struck her. For various reasons, it was impossible to determine at what speed the BMW was traveling when it hit her.

28. The BMW's collision with the County Police car sheared the right front axle of

⁹ State's Ex. 96; Stipulation of Fact ¶ 3.

the BMW. Very shortly after hitting Smith, the BMW went from lane 1 at an oblique angle over to the westside curb on U.S. 13.

29. There was no evidence from tire marks or otherwise, of braking from the point Taye passed the rescue truck to the collision with the police car and/or until it came to rest about four hundred feet past the point of impact with Smith. The BMW struck the curb next to the shoulder of lane 4 and traveled a short distance along the curb before coming to rest.

30. The collision between the BMW and the police car not only completely sheared the BMW's right front axle, it put the right front tire at an odd angle. That tire left a continuous thin mark in the Route 13 roadway from near the point of impact with Smith to where it came to rest against the curb.

31. The driver's side airbag was deployed. It is not known when it was but likely in the initial collision with the police car. The passenger side airbag was not deployed.

32. Taye was the lone occupant of the BMW. Witnesses, who parked near the stopped BMW, saw him struggle from the driver's side to the passenger's side. They offered medical assistance as he crawled out. Eventually, however, an unknown male arrived and dragged Taye to his car. The two fled the scene.

33. Examination of the BMW's interior revealed Taye's wheelchair in the back seat, and the driver's seat was set far back from the dashboard to accommodate a person of his height rather than that of the BMW's shorter owner, Young. At the scene where the

BMW came to rest by the passenger door, the police recovered a long thin pole approximately thirty-three inches in length (somewhat thicker than a cane).

34. When the police later went to the Taye/Young residence, Taye was not at home nor was the BMW in the garage.

35. Michelle Smith died of several blunt force injuries, including one to her upper forehead.

36. A neighbor of Young and Taye has seen him operate the BMW in their neighborhood without apparent difficulty.

37. Circumstantial evidence proves beyond a reasonable doubt Taye operated the BMW, prior to December 20, 2008, by taking it on several occasions to an auto detailing business and to various adult entertainment establishments. Additionally, on these occasions he brought a wheelchair with him and was able to disassemble and reassemble it to get in and out of the BMW and these various businesses. The wheelchair recovered from the BMW is easily - as shown in court - disassembled and reassembled.

38. In November 2007, Taye was involved in a personal injury accident on Maryland Route 213 at Whitehall Road in Elkton. He was operating the same BMW as he was on December 20, 2008.

39. Taye did not remain at the scene on this occasion. He took the BMW, minus a bumper, dislodged in the collision, to a nearby neighborhood and attempted to disguise its presence by parking it with the undamaged bumper facing out. He crawled out of the

BMW and got same distance away. He called Young who came to pick him up but, the Court finds a beyond a reasonable doubt, she took the Elkton Police to him. He was sitting in her other car.

40. At the point where the Elkton police came across Taye, he denied ownership of the wheelchair found in the BMW. It was later identified by serial number as the same one found in the back seat of the BMW on December 20, 2008. Taye also denied being involved in the accident.

41. The Elkton police also recovered a long wooden pole or stick very similar to the one recovered from the BMW on December 20, 2008. They did not keep it for evidence. DNA testing showed Taye was a “contributor” to a sample taken from the pole taken as part of the investigation of the December 20, 2008 incident.

42. In September 2008, Smith applied to become a firefighter and for emergency services (EMS) classification. The application was approved by the Delaware City Fire Company (DCFC) on September 3, 2008. Her status was “probationary” firefighter. She had to undertake required training to be classified as a “firefighter” - a designation to be given by the DCFC.¹⁰

¹⁰ “On top of that, during the probationary status, each member is required to take specific training classes at the Delaware State Fire School, one being a basic firefighting class, within their probationary period, as well as a vehicle rescue, anatomy class. Both of these classes are held at the Delaware State Fire School, in Dover, and as well as a hazardous materials awareness class, all within their general first probationary period.”
(continued...)

43. Prior to September, Smith had helped with ambulances and undertaken basic life support courses.

44. Smith began and completed Delaware State Fire School firefighter training completing various courses in (1) hazardous materials awareness, (2) structural firefighting evolutions, (3) vehicle rescue and basic firefighting skills.¹¹ Her training included suppressing, under supervision, several kinds of live fire, including what is known as a “burn building” exercise; she also had completed the “smokehouse” training exercise, she was being trained to drive fire trucks.

45. DCFC also trained her to be a firefighter. As of November 26, 2008, DCFC classified her as a firefighter.

46. Smith was dispatched on several calls between September 6, 2008, and December 7, 2008.¹² None were as an ambulance driver on riding in an ambulance. All were on “traditional” fire engines of different types, such as a rescue or ladder truck. Most of the calls were for “fire” matters and many of these were to assist other fire companies.

47. As a probationer up to November 26, 2008, Smith could not enter a structure

¹⁰(...continued)

Testimony of James Rosseel, dated October 8, 2009. Rosseel is the Chief of the Delaware City Fire Company; a position he has held for fourteen years. Among his duties is to oversee all firefighter training.

¹¹ State’s Ex. 82.

¹² State’s Ex. 84-92.

to actively suppress a fire. On one call she rode on a rescue truck to assist other DCFC personnel rescue boaters whose boat had become stuck in the Delaware River.¹³

48. On November 26, 2008, the DCFC classified Smith a full-fledged firefighter.¹⁴ This meant she had completed her State Fire School training and additional training conducted within DCFC. Such designation also meant Smith was qualified to enter the interior of structures to suppress fires.

49. Smith was dispatched along with other DCFC members on December 7, 2008 to assist the Christiana Fire Company with a multi-residential fire.¹⁵ She rode on the rescue pumper. The DCFC truck was on a standby status at a hydrant.

50. On all occasions when dispatched in this time frame through December 7th, Smith was dressed in full firefighter gear.

51. As of December 20, 2008, Smith was not certified to be an emergency medical technician but had begun her training to become so. There is a state mandated process to be certified. Hutchinson was a certified EMT, and is certified to teach EMT courses at the State Fire School.

52. It is usual for members of the DCFC to have dual roles, such as being a

¹³ State's Ex. 93.

¹⁴ To be an EMT, a person has to be certified by the State as such after completing various courses. The State does not have an equivalent procedure to be certified as firefighter.

¹⁵ State's Ex. 92.

firefighter and being classified as EMT. Also, the gamut of duties of a “firefighter” are quite broad and what duty would be performed for a particular occasion depends upon who is available:

Q: Okay. Now, what determines on a particular night, in a particular event, what actual function one is to have when they have this dual certification? What determines if you’re going to go in the ambulance, and be a driver? Let’s assume that you have EMT status and firefighter status and ambulance driver status, and now 815 has to go out - - F-15, was that the rescue truck?

A: R for rescue.

Q: Okay, R-15 has to go out. Who decides or what decides, okay, you drive the ambulance, you’re the EMT on the ambulance, you guys, even though you’re EMT certified, you’re on the pumper or you’re on the area, what decided that?

A: Staffing.

Q: And that would be, then, whoever the senior officer is making a determination based upon whoever is available?

A: Who’s available. It’s a volunteer service. As I previously mention, we only have one career staff on duty, so the remaining balance of the staff is up to the volunteers. The senior officer at the time of the incident is responsible for delegating that function person A through person X might serve or have to serve to handle the incident.

Q: Although from your person perspective, all of the activities come under the umbrella of firefighting whether it’s going out and rescuing somebody on a boat, getting kitty out of a tree, breaking down a door into a house, rescuing somebody from a fire in a home, rescuing somebody, extricating them from an automobile, although in your estimation that’s under the umbrella of firefighting, there’s specialty areas within there, in terms of functions that one may be playing that night, without being a firefighter, per se?

A: I agree.¹⁶

Conclusions of Law

As to Count I - Murder in the First Degree:

From this Court's pattern jury instructions:

Under Delaware law, a person is guilty of murder in the first degree when he recklessly causes the death of a firefighter who is acting in the lawful performance of duty.

In other words, in order to find the defendant guilty of murder in the first degree, the State must establish beyond a reasonable doubt each of the following two elements:

First, the defendant caused the death of Michelle Smith, a firefighter, who was acting in lawful performance of her duty at the time of death; and

Second, the defendant acted recklessly.

In order to prove that the defendant "caused" Michelle Smith's death, the State must establish that Michelle Smith would not have died but for the defendant's conduct.

"Recklessly means that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that Michelle Smith's death would result from his conduct. The State must demonstrate that the risk was of such a nature and degree that the defendant's disregard of it was a gross deviation from the standard of conduct that a reasonable person would observe under the same circumstances."¹⁷

The Court finds the following beyond a reasonable doubt:

¹⁶ James Rosseel testimony dated October 8, 2009.

¹⁷ Del. Super., P.J.I. Crim. § 9.f4 (2000).

1. Joseph Taye caused Michelle Smith's death. The parties stipulated she died from blunt force injuries and several witnesses saw Taye's BMW strike her. She would not have been killed but for his act. He was the driver of the BMW.

2. Michelle Smith was a firefighter.¹⁸ The Court acknowledges that on December 20, 2008, at the time she was killed, she was not suppressing a fire, not driving or riding in a fire truck, nor dressed as a firefighter.

She had, however, completed all necessary training to become a firefighter, both at the Delaware Fire School and within the Delaware City Fire Department. Subsequent to her designation as a firefighter by that Department on November 26, 2008, she rode on fire trucks to two incidents as a firefighter.¹⁹ One incident involved an actual fire where the DCFC acted in a back up role. The other incident, however, involved the rescue of boaters whose boat had become stuck in the Delaware River.

Michelle Smith had the necessary training to be an emergency services responder (EMR) and was properly licensed to drive an ambulance. She had not, however, completed the necessary training as of December 20, 2008, to be an emergency medical technician (EMT).²⁰

¹⁸ The Court notes that Atkinson, the EMT, riding in the ambulance with Smith testified he had not taken all the training to be a firefighter, specifically mentioning that he had not done the "burn building" exercise.

¹⁹ Prior to November 26, 2008, she was on a probationary firefighter status, rode on fire trucks but was not allowed to go inside burning buildings.

²⁰ The Court notes various records, hospital, etc., noted she was an "EMT."
(continued...)

It is not unusual either in the DCFC or other fire companies for persons to be qualified as firefighters and be qualified to be an EMS/First Responder or firefighter and an EMT.

Within the DCFC, at least, the role an individual fills on a particular occasion, whether firefighter, EMT, EMS or some combination is often a function of who is available - staff - to fill the needed functions. Also, as seen from the evidence, the duties of a firefighter can vary significantly from one occasion to the next.²¹

The word “firefighter” in § 636(a)(4) is not defined. The Criminal Code has several provisions applicable to determining Michelle Smith’s status. One is 11 *Del. C.* § 201(1):

To proscribe conduct which is unjustifiably and inexcusably causes or threatens harm to individual or public interests.

Another is § 203:

A general rule that a penal statute is to be strictly construed does not apply to this Criminal Code, but the provisions herein must be construed according to the fair import of their terms to promote justice and effect the purposes of the law, as stated in § 201 if this title.

The remaining statutory provision is § 221(c):

If a word used in this Criminal Code is not defined herein, it has its commonly accepted meaning, and may be defined as appropriate to fulfill the purposes of the provision as declared in § 201 of this title.

²⁰(...continued)

However, she had not, when killed, completed her EMT training and was not certified as an EMT as Delaware law requires.

²¹ *See supra.* p. 13.

Also, to achieve the definition for a word the Criminal Code does not define, the Court may also look at the dictionary definition.²² This Court notes again that “firefighter” is defined as a person who puts out fires.²³ The evidence at trial showed that firefighters perform myriad duties in addition to suppressing fires and most of their activities do not involve fire suppression. As an example, the case where the Five Points personnel on December 20, 2008, were (1) in a fire truck, (2) dressed in firefighters uniform, (3) had, prior to the fatal incident, gone with DCFC ambulance to an auto accident scene and one medical emergency, (4) were not responding to a fire at the scene where Michelle Smith was killed.

The Court finds the dictionary definition, while helpful, is inadequate and incomplete. While fire suppression is a function of a firefighter, it is and has become no longer the exclusive duty. To define “firefighter” consistent with the admonition of § 221 the common meaning goes beyond just a person who fights fires. As the evidence in this case shows, the variety of functions of persons who are firefighters has a broader reach, such as rescuing boaters, going to accident scenes where there are no fires to help extricate vehicle occupants, etc. This wider, commonly accepted meaning fulfills the “public purposes” provision of § 201. It demonstrates why stopping at the dictionary definition alone meets neither the commonly accepted meaning nor the public purpose statutory

²² *Cephas v. State*, 911 A.2d 799 (Del. 2006).

²³ *State v. Taye*, 2009 WL 2634719, at *1 (Del. Super. Aug. 27, 2009).

provisions. In addition, the “firefighter” training required of Smith and all who attend training at the Delaware Fire School included “Vehicle Rescue,” with a number of sub-categories, and “Hazardous Material Awareness.”²⁴

The Court also finds that if one, as in this case, Michelle Smith, is properly trained and classified as a firefighter, has performed the myriad duties of a firefighter, but was not fighting a fire when killed, she is and was a firefighter. Because of her training background and variety of duties, it is not necessary and just to confine the analysis of her status to the evening of December 20, 2008. The determination of Michelle Smith as firefighter is confined to the facts of this case.

3. Michelle Smith, administering first aid to Edward Reiss on December 20, 2008, was acting in the lawful performance of her duties as a firefighter.

4. The defendant acted recklessly.

To act recklessly means Taye was aware of and consciously disregarded a substantial and unjustifiable risk that Michelle Smith’s death would result from his conduct.²⁵

The evidence shows that Taye’s driving privileges had been revoked since May 2005, and had not been reinstated. The evidence determined beyond a reasonable doubt that Taye was not properly specially licensed as a paraplegic to operate a motor vehicle. Further, it shows the BMW he operated was not modified in any way for a paraplegic

²⁴ State’s Ex. 82.

²⁵ 11 *Del. C.* § 231(e).

driver. Beyond a reasonable doubt, Taye operated the brakes and accelerator of the BMW with a thirty-three inch pole or stick.

Taye in non-emergency situations was, however, able to use the stick and drive without incident, such as his trips to the adult entertainment establishments and the auto detail shop. The accident in Elkton suggests he was not able to respond as would a non-paraplegic to emergency situations, but the Court finds beyond a reasonable doubt that by his flight, efforts to evade detection, and denial of responsibility, he was aware of the extra risks driving with a stick created, and his intent not to be discovered by the police doing so. Yet he continued to drive the BMW.

On December 20, 2008, he was driving far too closely to a vehicle in front of him, heightening the risk of being unable to respond to traffic conditions presented. That was an intentional act. He partially went off the roadway to pass a fire truck whose many emergency lights were flashing. As that truck's lights were significantly higher than the car in front of him, and since U.S. 13 is a straight roadway for some distance prior to this point, there is no way Taye could not have seen the emergency lights for some distance ahead of him before passing it. Yet he continued at the same speed, unlike the cars on his right which slowed in the vicinity of the rescue truck and he (and the other car) passed that truck on the left. They were the only two to do so. Passing on the left was an intentional act. Taye was, due to his speed and following too closely, unable to observe that the rescue truck had partially moved into his lane. Taye was either going over the speed limit

when he passed the rescue truck, or failed to slow down as it slowed, even if, at that time, he was going within the speed limit.

When the vehicle in front of him moved out of the way, he did not brake even though the County Police car, parked in the roadway, was clearly visible. There was no effort to evade it. Nor, was there any effort to slow down, or if there was, using the stick was unsuccessful. His collision with the police car knocked its front end from lane 1 to lane 2.

The Court finds his driving under all these circumstances demonstrates beyond a reasonable doubt that Taye was aware and consciously disregarded a substantial risk that he would come upon or be upon an accident scene and strike and kill someone. His actions were far more than criminally negligent, they were reckless.

Accordingly, the Court finds Joseph Taye guilty beyond a reasonable doubt of murder in the first degree.

As to Count II - Murder in the Second Degree:

The Court's pattern instructions for this offense provides:

In order to find the defendant guilty of murder in the second degree, the State must establish beyond a reasonable doubt each of the following three elements:

First, the defendant caused the victim's death; and

Second, the defendant acted recklessly; and

Third, the defendant's recklessness manifested a cruel, wicked, and depraved indifference to human life.

In order to prove that the defendant "caused" Michelle Smith's death, the State must establish that Michelle Smith would not have died but for the defendant's conduct.

“Recklessly” means that the defendant was aware of and consciously disregarded a substantial and justifiable risk that Michelle Smith’s death would result from his conduct. The State must demonstrate that the risk was of such a nature and degree that the defendant’s disregard of it was a gross deviation from the standard of conduct that a reasonable person would observe under the same circumstances.

“Cruel” describes the malicious infliction of physical suffering upon a human being. “Depraved” describes an indifference for human life. “Wicked” describes lack of conscience or morality.²⁶

The Court finds the following beyond a reasonable doubt:

1. The Court has determined Joseph Taye caused Michelle Smith’s death.
2. The Court has established that Joseph Taye acted recklessly.
3. The Court finds that the State failed to prove beyond a reasonable doubt that

Joseph Taye’s reckless conduct manifested a cruel, wicked and depraved indifference to human life as those terms are defined and constitute an element of this offense.

Since the Court finds Joseph Taye’s conduct to have been reckless, the Court finds him guilty beyond a reasonable doubt of manslaughter.²⁷

As to Count III - Assault in the First Degree.

The Court finds beyond a reasonable doubt that Joseph Taye’s conduct on the evening of December 20, 2008, created a substantial risk of death. Most of the basis for this finding is found in the Court’s findings under Count I. The parties stipulated to the fact

²⁶ Del. Super. Ct. P.J.I. Crim. § 9.e1.

²⁷ 11 *Del. C.* § 632.

that Edward Reiss suffered serious physical injury as a result of Taye hitting his body.

Accordingly, the Court finds Joseph Taye guilty beyond a reasonable doubt of assault in the first degree.

As to Count IV - Reckless Endangering in the First Degree:

The evidence establishes beyond a reasonable doubt that several persons stopped to render aid to Reiss. One had called 911. Another was assisting Michelle Smith but her boyfriend pulled her out of the way just before the BMW struck Smith. All of those persons who had stopped were standing in the median area of the turn lane in close proximity to Reiss' body and in the vicinity of the police car. Without slowing, braking, taking evasive action and being in lane 1, Taye created the substantial risk of death to these persons.

Accordingly, the Court finds Joseph Taye guilty beyond a reasonable doubt of reckless endangering first degree.

As to Count V - Leaving the Scene of an Accident Causing Death:

The charge is that Taye was involved in an accident resulting in Michelle Smith's death and serious injury to Edward Reiss. It is likely that the BMW's collision with the County Police car caused to the driver's air bag to deploy which probably obstructed Taye's view.

Unmistakably, however, he would have sensed Michelle Smith's body hitting the front of his car then the substantial impact of her head hitting and shattering the driver's

side windshield. He also would have sensed the BMW running over something, either Reiss or his motorcycle.

All of this should have prompted him to remain at the scene. But he fled. He was asked by two people to stay.

Accordingly, the Court finds Joseph Taye guilty beyond a reasonable doubt of leaving the scene of an accident resulting in death.

As to Count VI - Driving a Vehicle While License is Suspended or Revoked:

Joseph Taye's license was revoked in May 2005 and never re-instated. Accordingly, he is guilty beyond a reasonable doubt of driving a vehicle while license is suspended or revoked.

Summary

Count I - Murder in the First Degree - Guilty.

Count II - Murder in the Second Degree - Guilty of the lesser included offense of Manslaughter.

Count III - Assault in the First Degree - Guilty.

Count IV - Reckless Endangering in the First Degree - Guilty.

Count V - Leaving the Scene of a Collision Resulting in Death - Guilty.

Count VI - Driving While License Suspended or Revoked - Guilty.

A presentence investigation is ordered, and sentencing is scheduled for February 5, 2010, at 9:30 a.m. Since Joseph Taye has been convicted of the offenses where non-suspendable minimum terms have to be imposed, his bail is revoked.

IT IS SO ORDERED.

J.